

circumstances and for a purpose he or she could reasonably have believed under the circumstances was in the best interests of the savings association or its members.

However, no indemnification shall be made unless the association gives the Office at least 60 days' notice of its intention to make such indemnification. Such notice shall state the facts on which the action arose, the terms of any settlement, and any disposition of the action by a court. Such notice, a copy thereof, and a certified copy of the resolution containing the required determination by the board of directors shall be sent to the Regional Director, who shall promptly acknowledge receipt thereof. The notice period shall run from the date of such receipt. No such indemnification shall be made if the OTS advises the association in writing, within such notice period, of his or her objection thereto.

(d) *Insurance.* A savings association may obtain insurance to protect it and its directors, officers, and employees from potential losses arising from claims against any of them for alleged wrongful acts, or wrongful acts, committed in their capacity as directors, officers, or employees. However, no savings association may obtain insurance which provides for payment of losses of any person incurred as a consequence of his or her willful or criminal misconduct.

(e) *Payment of expenses.* If a majority of the directors of a savings association concludes that, in connection with an action, any person ultimately may become entitled to indemnification under this section, the directors may authorize payment of reasonable costs and expenses, including reasonable attorneys' fees, arising from the defense or settlement of such action. Nothing in this paragraph (e) shall prevent the directors of a savings association from imposing such conditions on a payment of expenses as they deem warranted and in the interests of the savings association. Before making advance payment of expenses under this paragraph (e), the savings association shall obtain an agreement that the savings association will be repaid if the person on whose behalf payment is made is later deter-

mined not to be entitled to such indemnification.

(f) *Exclusiveness of provisions.* No savings association shall indemnify any person referred to in paragraph (b) of this section or obtain insurance referred to in paragraph (d) of the section other than in accordance with this section. However, an association which has a bylaw in effect relating to indemnification of its personnel shall be governed solely by that bylaw, except that its authority to obtain insurance shall be governed by paragraph (d) of this section.

(g) The indemnification provided for in paragraph (b) of this section is subject to and qualified by 12 U.S.C. 1821(k).

[54 FR 49492, Nov. 30, 1989, as amended at 56 FR 59866, Nov. 26, 1991; 60 FR 66717, Dec. 26, 1995]

§§ 545.123–545.125 [Reserved]

§§ 545.127–545.130 [Reserved]

§ 545.132–545.135 [Reserved]

§ 545.138 Data-processing services.

(a) *Authorization.* A Federal savings association may engage in any permissible activity or service by using data processing equipment or technology, and may provide data processing and data transmission services to others on a for-profit basis as permitted by this section. An association may establish and maintain an office to provide such services to others without observing the application and approval procedures for branch offices set forth in this part.

(b)(1) *Permissible data.* The data to be processed or transmitted by a Federal savings association pursuant to paragraph (a) of this section must be financial, economic, or related to thrift, home financing, or the activities of depository institutions.

(2) *Customer restrictions.* A Federal savings association must provide data processing and transmission services primarily for itself, other depository institutions (including the parent or a subsidiary of either), and persons with whom the Federal savings association has established a loan or deposit relationship. A Federal savings association may also provide such services to other